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Letter dated 25 April 2006 from the Chairman of the Security Council Committee established pursuant to resolution 1540 (2004) addressed to the President of the Security Council

On behalf of the Security Council Committee established pursuant to resolution 1540 (2004), and in accordance with paragraph 4 of that resolution, I have the honour to submit the report of that Committee on the implementation of resolution 1540 (2004) to the Security Council for its examination.

The Committee would appreciate it if the present letter, together with the report and its annexes, could be brought to the attention of the members of the Security Council and issued as a document of the Council.

(*Signed*) Peter **Burian**
Chairman
Security Council Committee established
pursuant to resolution 1540 (2004)

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Report of the Committee established pursuant to resolution 1540 (2004)

Summary

The proliferation of weapons of mass destruction, their means of delivery and related materials constitutes a threat to international peace and security. This global threat has been addressed by the international community through multilateral legal instruments such as the Nuclear Non-Proliferation Treaty, the Biological and Toxin Weapons Convention and the Chemical Weapons Convention. However, the elaboration of, adherence to, and the national implementation of such instruments is far from providing a universal and foot-proof net for preventing the proliferation of nuclear, biological and chemical weapons, their means of delivery and related materials.

With resolution 1540 (2004), the Security Council adopted the first international instrument that deals with weapons of mass destruction, their means of delivery and related materials in an integrated and comprehensive manner. It establishes binding obligations for all States regarding non-proliferation and is aimed at preventing and deterring illicit access to such weapons and weapon-related materials. The resolution requests all States to report on measures they have taken or intend to take to implement the obligations under the resolution.

As at 20 April 2006, 129 States Members of the United Nations and one organization* have submitted first national reports to the Committee established pursuant to resolution 1540 (2004). 62 Member States have yet to submit their first report. In response to the examination of the first national reports by the Committee, 79 States provided additional information.

The present report builds on the examination of data submitted in the national reports, the additional information provided by States and the information available in a legislative database developed by the Committee containing national laws and regulations. It provides detailed recommendations with a view to enabling the Security Council to further monitor the implementation of resolution 1540 (2004), as well as enabling States to continue fulfilling the requirements under the resolution.

Monitoring the implementation

Developing, updating and enacting national laws and other measures to prevent the proliferation of and to prohibit access to weapons of mass destruction, their means of delivery and related materials, as well as to prohibit access of non-State actors to such items is an ongoing process that may not always have immediate results. The reasons may lie in the lack of capacity, different national priorities and time-consuming inter-agency and parliamentary procedures. Monitoring the implementation of resolution 1540 (2004), however, is a prerequisite to identifying the gaps that exist and to assisting States to fulfil the requirements under the resolution. To address this:

(a) The mandate of the Committee should be extended for another two years.

2. If its mandate is extended, the Committee should pursue a work programme covering a 12-month period, which would include all of the elements detailed in paragraph 136 of the present report, as opposed to the 3-month period its work programmes have covered in the past.

3. States should provide additional information on national implementation as an ongoing process.

Outreach activities

Taking into account the fact that 62 States have yet to submit their first national report, of which 55 are in three geographical areas, and the gaps in the national reports that follow certain regional patterns, activities to assist States in meeting the implementation requirements of the resolution should concentrate on regions and areas where specific needs were identified. To address this:

Regional and subregional outreach activities should be widened and intensified with a view to providing in a structured manner guidance to States for implementing the obligations under the resolution.

Assistance

The reasons for not submitting national reports as well as for the gaps in national implementation result in part from insufficient understanding, lack of capacity, and different national priorities. Without counting the non-submitting States, 32 States requested assistance in their national reports for implementing resolution 1540 (2004) and 46 States offered assistance in that regard. To address this:

1. Both States making offers of and States making requests for assistance should take a proactive approach on a bilateral basis, including making use of offers by international organizations.

2. States should be encouraged to make use of background information provided through the legislative database developed by the Committee as well as legislative advice provided by international organizations, when enacting national laws and measures.

3. National practices in implementing resolution 1540 (2004) should continue to be identified with a view to providing further general guidance, upon request, to States that are seeking legislative assistance in implementing the resolution.

Implementation plans

States might not have the full capacity or might at present consider that they do not have a need to enact specific legislation controlling all or some of the weapons of mass destruction, their means of delivery and related materials covered by the resolution on the grounds that they do not now have such materials within their territories. However, inasmuch as this is a direct and binding requirement of the resolution, all States must take steps to enact and enforce the appropriate legislative measures. This is also prudent since States may not possess materials, but their territories may still be used as part of the proliferation pathway. To address this:

States should be encouraged to provide additional information on national implementation as an ongoing process, including for instance a road map or an action plan for addressing remaining measures to be taken to fully implement the resolution, taking into account the analysis provided by the Committee.

* European Union

I. Introduction

1. The Security Council unanimously adopted resolution 1540 (2004) on 28 April 2004. The Council, inter alia, affirmed that the proliferation of nuclear, chemical and biological weapons and their means of delivery constitutes a threat to international peace and security. The main objective of the resolution is preventing the proliferation of weapons of mass destruction, their means of delivery and related materials and deterring non-State actors from accessing or illicit trafficking in such items. It seeks to enhance the capacity of all States to respond efficiently to the threat posed by the proliferation of weapons of mass destruction and their means of delivery, while not hampering international cooperation regarding related materials, equipment and technology for peaceful purposes. Resolution 1540 (2004) is the first international instrument that deals with the non-proliferation of weapons of mass destruction, their means of delivery and related materials in an integrated and comprehensive manner.

2. The Committee in its letters to States noted, inter alia, that by adopting resolution 1540 (2004) the Security Council decided inter alia that States should adopt and enforce appropriate effective laws which prohibit any non-State actor to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery. Similarly, the Committee also noted that the Council further decided that States should take and enforce effective measures to establish domestic controls to prevent the proliferation of such weapons and their means of delivery, including related materials. In addition, the Committee noted that controls include measures to secure and protect such items, export and border controls, law enforcement efforts, and the development and improvement of appropriate legislation and administrative provisions.

3. The present report is submitted in accordance with paragraph 4 of resolution 1540 (2004) and its structure is based on the operative paragraphs of the resolution. As required by the resolution, the report focuses on the status of its implementation as of April 2006.

II. Organization of work

4. By resolution 1540 (2004) the Security Council decided to establish, for a period of no longer than two years, a Committee of the Security Council, consisting of all members of the Council, which would, calling as appropriate on other expertise, report to the Security Council for its examination, on the implementation of the resolution. The Council also expressed its intention to monitor closely the implementation of the resolution and, at the appropriate level, to take further decisions as required to that end.

5. On 9 June 2004, the Security Council appointed Ambassador Mihnea Ioan Motoc of Romania as Chairman and the Philippines as Vice-Chairman of the Committee. A Senior Political Affairs Officer of the Department of Political Affairs of the Secretariat was appointed as Secretary of the Committee, and was assisted by an Associate Political Affairs Officer. The Department for Disarmament Affairs was assigned the task of providing substantive and logistical support to the Committee and its experts.

6. On 13 August 2004, the Committee adopted the guidelines for the conduct of its work and the guidelines for the preparation of national reports pursuant to paragraph 4 of the resolution. Both sets of guidelines were distributed formally to Member States for their information. The Committee also placed them on its official website. The guidelines for the conduct of the Committee's work provide details concerning the mandate and working methods of the Committee, including its composition, format of meetings, documentation, information received, reports from States, decision-making and transparency. The guidelines for the preparation of national reports were designed to assist States in preparing their national reports on the implementation of the resolution. On 26 September 2004, the Committee adopted guidelines for hiring experts to assist the Committee in its work.

7. On 22 October 2004, the Committee decided to establish three subcommittees with a view to sharing the task of considering national reports submitted by States. Each subcommittee was responsible for an equal number of States, grouped according to alphabetical order. A Vice-Chairman was to preside over each subcommittee. On 26 October 2004, the Council appointed Benin and the United Kingdom of Great Britain and Northern Ireland as the additional Vice-Chairmen of the Committee.

8. On 7 January 2005, the Security Council took note of the Secretary-General's intention to appoint four experts to assist the Committee in accordance with the Committee's approval of such recruitment made on 1 December 2004. On 6 May 2005, the Secretary-General informed the President of the Security Council that he had approved the recruitment of four additional experts based on the decision of the Committee of 19 April 2005. The appointment of eight experts (see annex I) to assist the Committee in the process of consideration of the national reports was made in accordance with the relevant provisions of resolution 1540 (2004) and with the Committee's guidelines.

9. On 4 January 2006, the Council appointed Ambassador Peter Burian of Slovakia as the new Chairman of the Committee, while Ghana and Japan replaced Benin and the Philippines as Vice-Chairmen.

10. Since its establishment, the Committee has held 14 formal meetings and a number of informal meetings and consultations. The Subcommittees held 50 meetings to consider the national reports submitted by States. On 8 December 2004 and 16 December 2005, the Chairman presented reports to the Security Council on the activities undertaken and the results achieved by the Committee during the years 2004 and 2005. On 21 December 2005, the Chairman briefed the Security Council in closed consultation on the work performed by the Committee.

11. On 25 April, 20 July and 26 October 2005 and 21 February 2006, the Chairman, together with the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism and the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban, briefed the Security Council at an open meeting on the progress achieved by the subsidiary bodies in fulfilling their mandates. At the joint briefings held on 25 April and 20 July 2005, the Security Council adopted presidential statements whereby the Council, inter alia, invited the three Committees to continue reporting on their activities at regular intervals and, where appropriate, in a coordinated manner.

12. To help to streamline its work, the Committee approved four programmes of work, each covering three to four months, for the period from 1 April 2005 to 28 April 2006. Those programmes set goals and guidance on issues regarding examination of national reports, outreach activities and further reporting, assistance, transparency and cooperation with international, regional and subregional organizations as well as with other Security Council subsidiary bodies.

13. All relevant documents are listed in annex II.

III. Reporting and examination of national reports

14. In paragraph 4 of the resolution the Security Council called upon all States to present to the Committee, no later than 28 October 2004, a first report on the steps they had taken or intended to take to implement the resolution. Fifty-nine States met the deadline. With the approval of the Committee, the Chairman sent five rounds of correspondence to the Permanent Missions to the United Nations of non-submitting States, reminding them of the reporting request made in resolution 1540 (2004). In addition, the Chairman organized informal meetings in New York with regional groups to address the issue of reporting and to facilitate the implementation of requirements under resolution 1540 (2004). As at 20 April 2006, 129 States Members of the United Nations and one organization had submitted first reports to the Committee (see annex III).

15. A list of Member States that have yet to report appears in annex IV. Of the 62 States that have still to submit their first report to the Committee, 55 are in three geographical regions: Africa, the Caribbean and the South Pacific.

16. The Committee, with the support of its experts, developed a matrix based on the provisions of resolution 1540 (2004). After a pilot test was conducted, some typical information submitted by States to the Committee in national reports was added to the matrix. Using the matrix template, the Committee examined the national reports systematically, taking into account all information presented in the reports. The matrix follows the sequence of the operative paragraphs of the resolution. Where the resolution addressed identical issues in more than one section, the substance was merged to appear in the matrix only in one place. In every case, the matrix makes reference to the location of the substantive information in the source document. For each obligation in paragraphs 2 and 3, the matrix has parallel columns for national legal framework and enforcement measures in the area of biological, chemical and nuclear weapons and their means of delivery and, under paragraph 3, includes also related materials. The Committee and its experts merged the information in a single matrix that made it possible at any stage of the examination process to display graphically all information contained in a State's report.

17. In addition to the information provided in the national reports and in the report of the European Union, the Committee decided to use in the matrix relevant data identified from the public documents provided by States to the United Nations, the International Atomic Energy Agency (IAEA), the Organization for the Prohibition of Chemical Weapons and other international organizations.

18. On the basis of its examination of the national reports and for the purpose of furthering its knowledge, the Committee formally solicited additional information

and clarification from States that submitted their first reports. In the spirit of transparency, the Committee made the matrix available to each reporting State.

19. As at 20 April 2006, 79 States have responded to this request. They have submitted an updated report to the Committee either in descriptive form or by amending the matrix. Together with their first reports, these additions to the initial reports are published on the website of the Committee. The Committee used the information States submitted to augment their first report, supplemented by data garnered from official documents of each State available online, to create more accurate matrices for all reporting States. The States submitting additional information are identified in annex III.

20. Comparing the information provided by States in response to the Chairman's request with the information contained in the first reports, the conclusion may be drawn that the matrix offered States a better understanding of the information to be reported under resolution 1540 (2004), which consequently resulted in an increase of relevant information by about 67 per cent.

Recommendations

21. The Committee recommends that the Security Council:

(a) Continue monitoring the implementation of its resolution 1540 (2004), bearing in mind that enactment of national laws and other measures takes time and does not necessarily produce immediate results;

(b) Continue outreach to States, including those that did not submit their first national report, both individually and on a regional or subregional basis;

(c) Make available to States at an appropriate time the findings of the examination of the additional information provided by States for further clarification, where it is considered necessary;

(d) Invite States to provide relevant additional information on the national implementation of resolution 1540 (2004) as an ongoing process to minimize reporting requests;

(e) Inform States that have already reported to the Committee that the Committee intends to contact them again after a period of time to be determined by the Committee to take stock of the extent to which the resolution has been fully implemented by that time.

IV. Legislative database

22. When examining the first reports, the Committee took note of the fact that additional information relevant to the implementation of resolution 1540 (2004) was available on public websites of Governments and international organizations. In the light of the experience of the use of such information, the Committee decided to develop a legislative database, for the purpose of providing additional information on national legislation and measures related to the resolution.

23. For each State, the database contains links to the original texts of laws, ordinances, decrees, regulations and decisions related to activities addressed in the

resolution. Where no official legal text but its English or other language versions could be identified, those versions are included and marked "unofficial translation". With a few exceptions, relating mostly to English versions, all links connect to documents stored on publicly accessible websites of Governments, governmental agencies or international organizations.

24. The structure of the database follows that of paragraphs 2 and 3 of resolution 1540 (2004) and the matrix developed by the Committee for the examination of the national reports. The database contains links to all publicly accessible documents. It also lists documents mentioned in the national reports for which the Committee could not identify links but where it is interested in receiving any information on the availability of such links.

25. In the spirit of transparency, the Committee made the information contained in the database available to States, asking them for confirmation, updating and agreement to publish the database on the public website of the Committee.

26. In making this database available, the Committee neither endorses any of its contents nor suggests that any specific text therein represents a sufficient or comprehensive model for implementing the provisions of resolution 1540 (2004). Certain texts, ordinances, decrees or decisions therein may correspond more than others with the provisions of the resolution. States seeking to adopt and develop legislation and regulations to implement fully the provisions of resolution 1540 (2004) should rely on the contents of the database only for information and background.

Recommendations

27. The Committee recommends that the Security Council:

(a) Regularly update the database, with the assistance of States;

(b) Examine the feasibility of identifying best practices;

(c) Consider further expanding the database by including legislative information on States that have yet to submit a report;

(d) Use such information, as appropriate, in assisting non-submitting States in the preparation of their national reports;

(e) Have the experts research publicly available sites to identify legislation for States that have not yet submitted a report to the Committee and then share that information with those States in an effort to encourage them to prepare and submit their first reports.

V. Status of implementation

A. Paragraph 1 and related matters

28. By paragraph 1 of resolution 1540 (2004), the Security Council decided that "all States shall refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery".

29. In addition, in paragraph 8, the Security Council called upon States to promote the universal adoption and full implementation of multilateral treaties to which they are parties whose aim is to prevent the proliferation of nuclear, biological or chemical weapons.

30. The Security Council also decided that none of the obligations set forth in resolution 1540 (2004) should be interpreted so as to conflict with or alter the rights and obligations of States parties to the Treaty on the Non-Proliferation of Nuclear Weapons, the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction and the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction or alter the responsibilities of IAEA or the Organization for the Prohibition of Chemical Weapons.

31. The examination of the information provided by States parties and contained in other sources on the adherence to non-proliferation treaties shows that of the 129 Member States that submitted reports to the Committee:

- 126 are States parties to the Non-Proliferation Treaty, and 111 are members of IAEA;
- 120 are States parties to and 3 are signatory States of the Chemical Weapons Convention;
- 112 are States parties to and 7 are signatory States of the Biological and Toxin Weapons Convention.

32. The examination of the adherence to the key non-proliferation treaties also demonstrates that of the 62 Member States that did not submit a report:

- 62 are States parties to the Non-Proliferation Treaty, and 27 are members of IAEA;
- 55 are States parties to and 5 are signatory States of the Chemical Weapons Convention;
- 42 are States parties to and 9 are signatory States of the Biological and Toxin Weapons Convention.

In view of their status as States parties to those instruments, these States should be in a position to report within a short period of time on steps they have taken to implement the obligations under those agreements in their national legislation.

33. In the reports to the Committee, States also included information on their commitment to disarmament and non-proliferation, their status, membership, or adherence to counter-terrorism conventions, to non-proliferation and export control arrangements and initiatives, to nuclear-weapon-free zones and other multilateral and bilateral instruments. The Committee took note of such information and reflected it in each State's matrix. In doing so, the Committee restricted its examination to information relevant to resolution 1540 (2004) to avoid duplication of work with other Security Council subsidiary bodies.

Recommendations

34. The Committee recommends that the Security Council:

(a) Reiterate its decision that all States should refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery;

(b) Call upon States and relevant international organizations to increase their own outreach activities, making reference to the close linkage of the obligations under resolution 1540 (2004) and existing treaties, and renew its call upon States to promote the universal adoption and full implementation and, when necessary, strengthening of multilateral treaties to which they are parties whose aim is to prevent the proliferation of nuclear, biological and chemical weapons.

B. Paragraph 2[1]

35. By paragraph 2 of resolution 1540 (2004), the Security Council decided that all States, in accordance with their national procedures, should adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, in particular for terrorist purposes, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them.

36. When examining the national reports, the Committee noticed the difficulty of some States in understanding that paragraph 2 deals with weapons and their means of delivery, and notes that legislative or other measures to license or control related materials alone are not sufficient to satisfy States' obligations under paragraph 2.

37. The Committee noted that most of the national implementation legislation on prohibitions and enforcement referred to in paragraph 2 had been in place before the adoption of resolution 1540 (2004). For this reason, the national implementation legislation, as far as nuclear, biological and chemical weapons are concerned, is primarily in line with the obligations under the Nuclear Non-Proliferation Treaty, the Chemical Weapons Convention and the Biological and Toxin Weapons Convention but does not necessarily reflect all requirements mentioned in paragraph 2. This difference in language becomes most evident in States that considered the obligations under those three instruments as part of their national legislation, in accordance with their constitutional processes.

38. Such a procedure for implementing obligations under the Nuclear Non-Proliferation Treaty, the Chemical Weapons Convention and the Biological and Toxin Weapons Convention that deal primarily with State-to-State prohibited activities does not explicitly address non-State actors. This can be addressed only by specific legislation that also penalizes prohibited activities of non-State actors.

39. According to the reports, some States implemented the prohibition obligations by enacting legislation that covers biological, chemical and nuclear weapons either

[1] The statistical data in sections V.B to VIII.A and in annexes V to IX are based on the reports processed by the Committee as at 17 April 2006 and relate to 127 States.

separately or jointly, including by combining the framework legislation with its penal sanctions measures. Other States address such prohibitions within legislation that regulates and controls the peaceful use of related materials. This type of legislation is commonly based on the licensing of the permitted activities in this field. The underlying reasoning presumably is that since the activities related to weapons of mass destruction and their means of delivery will not be licensed, the obligations under the Nuclear Non-Proliferation Treaty, the Chemical Weapons Convention and the Biological and Toxin Weapons Convention would be met. An in-depth examination of such information provided to the Committee reveals that enforcement of such acts is usually based on administrative penalties for breaching licensing requirements only.

40. Recognizing the threat of possible acquisition and use of weapons of mass destruction and their means of delivery by terrorists, some States recently enacted anti-terrorism laws that cover sets of prohibitions associated with weapons of mass destruction, their means of delivery and related materials, including the penalization of respective violations by terrorists. However, non-State actors that engage in the activities resolution 1540 (2004) is designed to prevent, either knowingly or unknowingly, may or may not be motivated by terrorist purposes, or may not meet the definition of "terrorists" under the laws of such State, and as such might not be covered by such legislation. In addition, although those anti-terrorism laws might only include criminal penalties for violations, additional civil penalties might also be appropriate.

41. States also indicated that their national legislation dealing with the prevention of money-laundering and the financing of terrorism contains prohibitions and enforcement provisions that address aspects of financing under paragraph 2 of resolution 1540 (2004). However, most of those provisions are narrow in scope and are not aimed specifically at prohibiting the financing of proliferation. Such legislation may be useful, but may not be sufficient to implement States' obligations under paragraph 2 of resolution 1540 (2004). At least one State, however, has implemented the aspect of paragraph 2 relating to proliferation finance by establishing a targeted financial sanctions programme that blocks the assets of proliferators of weapons of mass destruction and their support networks. That State also prohibits its nationals and others within its jurisdiction from engaging in transactions with those to whom it has applied sanctions.

42. Finally, some States address the prohibited activities under paragraph 2 of the resolution and under the respective multilateral treaties only in the context of their criminal codes by including penalties for the violations of the prohibitions.

43. The Committee identified 82 States that deal with some prohibitions in their legal framework, and 76 States having relevant provisions in their penal legislation. However, major variations exist in the implementation of obligations in respect to the three categories of weapons of mass destruction and their means of delivery. In addition, the States with some legal framework measures in place are not necessarily those States that have criminalized such acts through appropriate penal legislation.

44. Twenty-three States reported that they had extended the application of penal legislation beyond their national territory by including the penalization of illicit activities of their nationals living abroad relating to weapons of mass destruction.

45. The Committee is concerned about the number of States that still have no legislation in place that prohibits and penalizes the possible use by non-State actors of their territory as a safe haven for activities related to weapons of mass destruction and their means of delivery.

46. The differences in the status of national implementation legislation in the three weapon categories are addressed in the following subsections.

1. Biological weapons

47. In the area of biological weapons and their means of delivery 56 States have some prohibitions covered in their national framework legislation, whereas 75 States penalize violations of prohibitions in their criminal codes. Manufacture/production and acquisition of biological weapons are the prohibited activities with the highest reporting rate in national framework legislation as well as in penal legislation.

48. Prohibited activities addressed in resolution 1540 (2004) but not covered by the Biological and Toxin Weapons Convention, namely, use, participation as an accomplice and financing, had a lower rate of coverage in framework legislation than in penal legislation, as the latter provides general penal clauses linked with a variety of criminal offences and by that is also applicable to activities related to weapons of mass destruction. Details of the national implementation of prohibitions related to biological weapons are given in annexes V.A and B.

2. Chemical weapons

49. Compared with biological weapons, the national legislation for chemical weapons and their means of delivery provides a more promising picture. A total of 69 States have some prohibitions covered in their national legal framework and 80 penalize violations of prohibitions. Again, manufacture/production and acquisition, but also use are the prohibited activities with the highest reporting rate in the framework as well as in penal legislation.

50. The analysis of the implementation of prohibited activities formulated in Resolution 1540 (2004) but not covered by the Chemical Weapons Convention gives the same picture as for biological weapons. Details of national implementation of prohibitions related to chemical weapons and their means of delivery are contained in annexes V.A and B.

3. Nuclear weapons

51. The number of States with national legislation for nuclear weapons and their means of delivery does not differ much from the situation in the field of biological weapons. A total of 60 States have a national legal framework, and 70 States penalize violations of prohibitions in their criminal codes. Apart from penalization of the use of nuclear weapons, manufacture/production and acquisition are the prohibited activities with the highest reporting rate in national framework legislation as well as in penal legislation.

52. As to the coverage of specific prohibition measures in the national framework as well as in national penal legislation, the situation follows quite closely the findings in the field of biological and chemical weapons, as shown in annexes V.A and B.

4. Means of delivery for weapons of mass destruction[2]

53. Thirty-six States reported that they have some legislation in place that prohibits non-State actors to develop, manufacture, acquire, stockpile, transfer, transport and use means of delivery for weapons of mass destruction. Thirty-eight States penalize some violations of prohibited activities. Details related to the means of delivery of the three categories of weapons of mass destruction are provided in annexes V.A and B.

Recommendations

54. The Committee recommends that the Security Council:

(a) Encourage States that have laws and regulations already in place to revisit their legislation with a view to filling the gaps related to all aspects of paragraph 2, and, where gaps exist, to update their legislation in line with the requirements of resolution 1540 (2004);

(b) Continue raising awareness that the lack of legislation to prohibit activities related to weapons of mass destruction and their means of delivery and of penalization of violations of such prohibitions places a State at risk by providing a potential safe haven for non-State actors.

C. Paragraph 3 (a) and (b)

55. By paragraph 3 of resolution 1540 (2004), the Security Council decided that all States should take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical or biological weapons and their means of delivery, including by establishing appropriate controls over related materials,[3] and to this end should:

(a) Develop and maintain appropriate effective measures to account for and secure such items in production, use, storage or transport;

(b) Develop and maintain appropriate effective physical protection measures.

56. With a few exceptions relating to States possessing nuclear weapons and/or still having stockpiles of chemical or old chemical weapons, the information provided in national reports with regard to paragraph 3 (a) and (b) primarily refers to hazardous nuclear, chemical and biological weapon-related materials, activities and installations for permitted peaceful purposes. In addition, 14 States provided information regarding measures they have in place to account for, secure or physically protect means of delivery for weapons of mass destruction; and 10 States indicated that they penalize such activities.

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[2] Means of delivery: missiles, rockets and other unmanned systems, capable of delivering nuclear, chemical or biological weapons, that are specially designed for such use.

[3] Related materials: materials, equipment and technology covered by relevant multilateral treaties and arrangements, or included on national control lists, which could be used for the design, development, production or use of nuclear, chemical and biological weapons and their means of delivery.

57. In all material categories, States referred in their reports to national licensing or registration procedures for peaceful uses of such materials and to national authorities controlling licensing procedures and activities related to them. In addition, some States included details of their licensing requirements. The Committee took note of this information and included it in the matrix.

58. A licensing or registration process is a prerequisite for any State to be able to control which types of materials exist within its territory, where they are and for what purposes. While a registration process may provide knowledge only on the whereabouts, a licensing process offers the opportunity to set safety and security standards, reporting requirements and control mechanisms.

59. Setting up national authorities is a requirement under the Chemical Weapons Convention. Furthermore, the establishment of a State system of accounting for and control of nuclear materials is required under the IAEA safeguards agreements. In this connection, States have indicated in their reports that besides licensing of permitted activities involving related materials they have established competent national authorities which perform regulatory and/or enforcement activities.

60. With respect to the measures taken to secure and physically protect materials related to weapons of mass destruction, their means of delivery and related materials, most States referred to a variety of laws and regulations that cover not only security issues but also material safety aspects, especially in the field of occupational health and environmental protection. The Committee considers that such legislation may cover some but not all of the obligations pursuant to paragraph 3 (a) and (b) of the resolution.

61. The Committee recognizes that some States might at present consider that they do not have a need to enact specific legislation for accounting for, securing and physically protecting all or some of the materials related to weapons of mass destruction and their means of delivery since they do not now have such materials within their territories. However, inasmuch as this is a direct and binding requirement of the resolution, all States must take steps to enact and enforce the appropriate legislative measures. This is also prudent since States may not possess materials, but their territories may still be used as part of the proliferation pathway.

62. The following subsections contain details relating to the three categories of weapons, their means of delivery and related materials, provided in the national reports.

1. Biological weapons and related materials

63. Information on the legislative and enforcement measures concerning weapon-related biological materials was provided by 54 States. Most of them have provided information on laws and regulations to ensure security and safety in production, use, storage and transport of hazardous biological agents.

64. The Committee noted that accounting for biological materials may be addressed in national legislation differently from accounting for chemical and nuclear materials that are produced, used and stored in finite measurable quantities. The risk related to biological weapons agents is inherent in their character as living organisms with the capability to replicate. Apart from toxins, accounting measures for living biological agents therefore focus primarily on keeping inventory logs on the possession and use of such types of agents. Seventeen States have reported that

they have in place laws and regulations that correspond to all or some of the requirements of accounting for biological agents. Some States also referred to national implementation legislation for the Chemical Weapons Convention that covers accounting for toxins as listed in Schedule I of that Convention.

65. Materials related to biological weapons include agents that cause human, animal and plant diseases. Accordingly, the handling of the disease-causing agents in most States is regulated in separate laws dealing with human, animal or plant health. The licensing of permitted activities and the control of the handling of such agents is usually split between public health, public veterinary health and plant control agencies. Some States in addition regulate in separate laws genetic engineering activities related to biological agents.

66. Forty-eight States have reported that they have legislation in place that provides for licensing or registration requirements for hazardous biological agents and indicated that they have specific laws and regulations addressing different safety and security concerns, including regulations requiring reliability checks of all personnel working with sensitive biological materials. In most cases, the legislation that applies to physical protection also covers accounting for or securing the production, use and storage of hazardous biological materials.

67. With regard to enforcement measures, 49 States have indicated that their penal codes or specific laws contain criminal or administrative penalties and sanctions against violations of safety and security requirements.

68. Details of the national implementation measures addressed in paragraph 3 (a) and (b) with regard to biological weapons, their means of delivery and related materials are contained in annex VI.

2. Chemical weapons and related materials

69. Ninety-six States made reference in their national reports to certain measures aimed at controlling the production, use, storage and transport of different types of chemical materials within their territories. The Committee found, however, that the number of States possessing comprehensive legislation and measures to account for, secure and physically protect such materials is lower. Nevertheless, compared with the same requirements for biological materials, the implementation process in the chemical field is more advanced because of the reporting and control mechanisms under the Chemical Weapons Convention.

70. Eighty-one States that provided some information on the national implementation framework under paragraph 3 (a) and (b) reported that they had established a National Authority. Under the Chemical Weapons Convention, it is the role of the National Authority to inform about the legislative and administrative measures taken to implement the Convention and to submit annually to the Organization for the Prohibition of Chemical Weapons data relevant to Schedule I, II or III chemicals. In this respect, 53 States reported that they either had in place appropriate laws in compliance with the reporting provisions of the Convention or that they provided annually their national data on Schedule I, II or III chemicals to the Organization. A cross-check of all available information confirmed that 45 States had partial or comprehensive national legislation in place for accounting for the production, use and storage of Schedule I, II and III chemicals.

71. The Committee also noted that 35 States which in fact had established such a body, as confirmed by the data available on the website of the Organization for the Prohibition of Chemical Weapons, did not provide any information on this subject in their reports.

72. The number of 46 States reporting on licensing provisions for use of hazardous chemical materials does not necessarily coincide with the number of National Authorities, as national licensing agencies may in most cases differ from such authorities. As for securing hazardous chemical materials in production, use, storage or transport, it was found that most States with licensing provisions have also legislation and regulations in place both in their legal framework and in criminal and administrative enforcement. Some States indicated having appropriate legislative measures in place without referring to their licensing procedures.

73. The examination of the information reported by States indicates that the legislation on physical protection measures for weapon-related chemical materials as well as on reliability checks of personnel handling such materials is less developed than for accounting and securing. Detailed information on the status of national legislative, administrative and penal enforcement measures related to chemical weapons, their means of delivery and related materials, including dual-use materials, is provided in annex VII.

74. Twenty-seven States have reported that they are taking necessary measures to implement the Chemical Weapons Convention. A number of States addressing the implementation of obligations under the Convention reported that they were either in the process of drafting specific bills, updating current legislation, or setting up committees which will make proposals to meet the obligations set forth in the Convention and relevant to the implementation of resolution 1540 (2004).

3. Nuclear weapons and related materials

75. Several instruments such as the Nuclear Non-Proliferation Treaty and the safeguards system, the amended Convention on the Physical Protection of Nuclear Material, the Convention on Nuclear Safety, the Code of Conduct on the Safety and Security of Radioactive Sources and the guidance on the import and export of radioactive sources have been developed to address specific issues related to, inter alia, prevention of proliferation, security, safeguards and physical protection of nuclear weapons and related materials.

76. Comprehensive safeguards represent a key means of verifying the compliance by non-nuclear weapon States parties to the Nuclear Non-Proliferation Treaty with their legal obligations not to use nuclear material to manufacture nuclear weapons or other nuclear explosive devices. The model Safeguards Agreement for comprehensive safeguards requires the State party to maintain a system of accounting and control sufficient for tracking nuclear material. States are required to accept safeguards on all nuclear materials in all peaceful nuclear activities within their territory or under their jurisdiction or control; some have done so pursuant to regional and bilateral instruments.

77. The Committee found that 43 States have in place specific laws and regulations responding to the requirements of resolution 1540 (2004) regarding the development and maintenance of measures to account for nuclear weapons and related materials in production, use, storage or transport. The regulations on the

accounting for nuclear weapons, for States that have nuclear weapons, and related materials in general comport with the nuclear activities conducted by particular States. They are enacted in the form of laws dealing with nuclear non-proliferation, peaceful use of nuclear energy, radiation protection and nuclear safety, licensing of nuclear activities, physical protection of nuclear materials and technologies or individual safeguards regulations for the control of nuclear materials. With regard to the enforcement provisions, the Committee was able to identify 41 States having in place criminal, civil or administrative penalties for persons violating the regulations on accounting for nuclear weapons or related materials in production, use, storage and transport.

78. Using public data available on the official website of IAEA, the Committee identified in addition 60 reporting States that have concluded safeguards agreements with IAEA. There is, however, a lack of information concerning the way the provisions of those safeguards agreements have been translated into domestic legislation. For this group of States no information has been compiled with regard to the enforcement measures applicable in the context of implementing such safeguards agreements.

79. The legislative measures to secure nuclear materials in production, use, storage or transport are intrinsically linked with the regulations on accounting for such items. Specific activities are licensed and authorized by States through their national regulatory authorities. Enforcement provisions established in this regard include information about regulatory authorities having powers to enforce compliance with requirements set forth in the legal framework. They also include procedures aimed at determining and exercising enforcement actions as well as for establishing offences and penalties for violations of the prescribed legal or technical norms on accounting for and securing nuclear materials.

80. The Committee found that 72 States had in place either comprehensive or partial legislation containing measures to secure the production, use, storage and transport of nuclear materials. With some exceptions, which represent essentially updates to the existing legislation or new norms, the reported regulations had been enacted before the adoption of the resolution. As in the case of regulations addressing the issue of accounting, measures to secure the production, use, storage and transport of nuclear materials have been incorporated in the framework legislation on radiation safety and control, acts on handling of dangerous substances, atomic energy acts, sensitive materials control acts, regulatory bodies' regulations on nuclear safety, non-proliferation acts or guidelines for accounting for and control of nuclear materials. Of this group, 67 States have in place comprehensive or partial provisions to enforce measures on securing the use, storage and transport of nuclear materials by criminal or administrative penalties.

81. In the area of physical protection of nuclear materials the most important international legal instrument is the Convention on the Physical Protection of Nuclear Material adopted in 1980. An amendment to the Convention was adopted in 2005, but has not yet entered into force. Once the amendment enters into force, the Convention as amended will legally bind States parties to the Convention and the amendment to establish and maintain a physical protection regime applying to their nuclear facilities used for peaceful purposes as well as to nuclear materials used for peaceful purposes in domestic use, storage and transport. Forty-nine States provided information regarding their national laws and regulations in the field of physical

protection of nuclear materials, installations and transport. As the amendment to the Convention was adopted recently and has not entered into force, only a few States referred to some recently implemented measures aimed at approving the amendment or updating existing legislation accordingly. Two nuclear-weapon States provided in addition information on legislative and enforcement measures regarding the physical protection of their nuclear weapons and means of delivery.

82. As to the issue of licensing of nuclear installations or entities and use of nuclear materials, the Committee can state that 69 States have indicated that they have in place specific legislation and regulations in this field, including reliability checks of personnel as well as some administrative and penal enforcement measures. Seventy-one States provided specific information on national regulatory authorities, stating that they were performing essentially three functions, namely, licensing of nuclear installations and activities, and inspection and assessment aimed at ascertaining compliance with applicable regulations and with the terms of licenses.

83. Details of the national implementation measures addressed in paragraph 3 (a) and (b) with regard to nuclear weapons, their means of delivery and related materials are contained in annex VIII.

Recommendations

84. The Committee recommends that the Security Council:

(a) Invite States to take note and make use of action plans, guidance and model legislation offered by international organizations, including IAEA and the Organization for the Prohibition of Chemical Weapons;

(b) Encourage all States parties to the Convention on the Physical Protection of Nuclear Material to ratify, accept or approve the amendment adopted on 8 July 2005.

D. Paragraph 3 (c) and (d)

85. Under paragraph 3 of resolution 1540 (2004), in taking and enforcing effective measures to prevent the proliferation of weapons of mass destruction and their means of delivery, including controls over related materials, States, inter alia, shall:

> "
>
> (c) Develop and maintain appropriate effective border controls and law enforcement efforts to detect, deter, prevent and combat, including through international cooperation when necessary, the illicit trafficking and brokering in such items in accordance with their national legal authorities and legislation and consistent with international law;
>
> (d) Establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items, including appropriate laws and regulations to control export, transit, trans-shipment and re-export, and controls on providing funds and services related to such export and trans-shipment, such as financing and transporting, that would contribute to proliferation, as well as establishing end-user controls; and establishing and

enforcing appropriate criminal or civil penalties for violations of such export control laws and regulations.

86. When reporting on the controls of materials related to weapons of mass destruction and their means of delivery, States mainly are addressing materials, equipment and technology covered by the relevant multilateral treaties and arrangements, or included on national control lists, which could be used for the design, development, production or use of weapons of mass destruction and their means of delivery. Such items often include dual-use items, that is, goods, technologies and services that have primarily commercial but also military applications.

87. Unlike the sections of this report on paragraphs 2 and 3 (a) and (b), this section does not analyse the data by type of weapon, their means of delivery and related materials, namely, biological, chemical and nuclear, because such a division reveals few differences in respect of border and export control measures. Among the States with some export control legislation in place, almost all control biological, chemical and nuclear materials themselves.

1. Border controls

88. The matrix includes information on three measures for the legislative and enforcement capacity of States to control their borders. The reports indicated that 77 States have a national legal framework to control the flow of goods across their borders, including those items related to weapons of mass destruction. A total of 79 States reported having specific penalties or enforcement capabilities associated with those cross-border movements. In contrast to the reported data, most States have at least some form of customs control, which suggests that the findings may understate efforts by States to control borders generally, as is shown by a list containing customs laws or regulations of 97 States published by the Committee on Customs Valuation of the World Trade Organization.

89. Seventy-three States identify specific enforcement agencies for border controls in their national reports. However, the national legal framework for border controls does not in all cases provide authority to the designated enforcement agency specifically over weapons of mass destruction, their means of delivery and related materials. Forty-eight States reported on steps providing technical support that would assist border control authorities in detecting, reporting or interdicting shipments of items related to weapons of mass destruction. A few States indicated that they exercise their border controls to include special economic or free trade zones. However, national reports submitted by Member States do not contain enough data on this subject to determine whether such controls are widespread enough to ensure that there will be no diversion of sensitive materials.

90. Thirty-one States reported on their ongoing efforts to cooperate internationally to detect, deter, prevent and combat the illicit trafficking in weapons of mass destruction, their means of delivery and related materials, in accordance with their national legal authorities and legislation and consistent with international law.

91. The Committee's findings concerning border control efforts raise the concern that a large number of States might not have either the technical capacity or the equipment to implement the full range of border controls called for under resolution 1540 (2004) or might not appropriately interpret their existing border control

authority to extend to items and technologies related to weapons of mass destruction.

2. Export controls

92. To implement the requirements of resolution 1540 (2004), States often need to discern between the illicit trafficking in weapons of mass destruction, their means of delivery and related materials and the lawful flow of dual-use items. Effective measures of export control will facilitate legitimate and secure trade among States. At the same time such controls can reduce the incidence of theft or diversion, including the illicit acquisition and use of such items.

93. A total of 80 States have some export control legislation concerning items related to weapons of mass destruction in place, and 69 have penalties associated with that legislation. Most States in their reports addressed enforcement of export control legislation in general without breaking it into specific items. The members of export control arrangements account for the majority of States with export control legislation covering biological, chemical and nuclear items and their means of delivery. A number of States not participating in these arrangements have also taken steps to control trade related to weapons of mass destruction.

(a) Licensing

94. Sixty-nine States reported that they exercised controls over at least some materials related to weapons of mass destruction by licensing exports and imports. Some States also indicated that they exercise control over those entities that produce or trade in such items either as a substitute for licensing exports or as a complement to export licensing. For 69 States with export licensing systems the Committee identified one or more national licensing bodies. A number of them conduct inter-agency reviews of export licences.

95. Beyond the penalties mentioned in the general discussion of export control legislation above, few States provide information on any penalties for violations, enforcement actions, or implementation measures they have taken regarding specific sections of their licensing system.

(b) Controls related to items

96. To emphasize the importance of listing items needed for appropriate effective controls under paragraph 3 of the resolution, the Security Council recognized the utility of effective national control lists and, in paragraph 6 of the resolution, called upon all States, when necessary, to pursue at the earliest opportunity the development of such lists.

97. Almost every State with export control legislation also has control lists of items related to weapons of mass destruction, including 55 States controlling means of delivery, although the number of States with control lists varies. A total of 59 States list biological items, 66 list chemical items and 61 States list nuclear items for export control. Most of those States update their control lists regularly, so that the development of new technologies, new acquisition patterns, foreign availability, and other factors can be taken into account.

98. Twenty-five States indicated in their national reports that they coordinate their control on dual-use items through common legislation. Their control list

corresponds with the control lists developed through the multilateral non-proliferation and export control arrangements. Some States that neither coordinate their export controls with other States nor participate in multilateral export control regimes have nevertheless adapted their lists of controlled items to those multinational lists.

99. Fifty-nine States control technologies as well as goods, and their lists cover means of delivery. In addition, some States exercise jurisdiction over items not specified on control lists, but which might contribute to proliferation. Compared with the practice of listing specific items, this approach is known as "catch-all" controls. Thirty-eight States also exercise control over intangible technologies.

100. Sixteen States control the provision of financial services related to the export of items related to weapons of mass destruction while 9 States indicated that they applied controls on transport services.

(c) Controls related to transactions

101. Forty-nine States indicated that they control transactions that could involve an end-user or the end-use of materials related to weapons of mass destruction. Failing to stop transactions involving inappropriate end-users will undermine the objectives of the resolution.

102. Many States may not produce items related to weapons of mass destruction and their means of delivery indigenously, so that controls on proliferation-sensitive items may seen unnecessary to them. Not only is this a requirement of resolution 1540 (2004), however, but capacity to control the transit, trans-shipment or re-export of such items could only help States to prevent their territories from being exploited for the proliferation of weapons of mass destruction, their means of delivery and related materials. A total of 84 States reported that they control at least some imports of materials related to weapons of mass destruction, although this figure varies somewhat by biological (69), chemical (76) and nuclear items (76). A limited number of States indicated that they control the transit, trans-shipment, or re-export of items related to weapons of mass destruction. These findings outline another gap in the international system that could be exploited, particularly with the increase in the use of free-trade zones or similar territories. Several of the countries with leading trans-shipment hubs already have appropriate border and export control infrastructures, and have implemented such measures.

103. Forty States control brokering, trading in, negotiating, or otherwise assisting in the sale of sensitive items of proliferation concern. These controls may extend to transactions that take place entirely outside the borders of the State and apply also to the actions of their nationals residing abroad.

104. Details of the national implementation measures addressed in paragraph 3 (c) and (d) of the resolution with regard to border and export control of weapons of mass destruction, their means of delivery and related materials are contained in annex IX.

Recommendations

105. The Committee recommends that the Security Council:

(a) Emphasize the need for further implementation of border and export control legislation and related enforcement measures to fulfil obligations under resolution 1540 (2004);

(b) Emphasize the relevance to resolution 1540 (2004) and to the effectiveness of combating illicit trade related to weapons of mass destruction and their means of delivery across borders of the combination of customs laws and regulations with national legislation such as prohibition of ownership or possession of weapons of mass destruction, their means of delivery and related materials, and emphasize that such controls should be implemented and enforced for non-proliferation purposes;

(c) Encourage States to create or enhance national systems to license the export of items, including identifying appropriate licensing authorities and lists of controlled items;

(d) Encourage States to establish or strengthen national systems to control transactions relevant to requirements under resolution 1540 (2004), including measures to control transit, trans-shipment or re-export;

(e) Encourage all States members of IAEA to participate in the IAEA Illicit Trafficking Database programme as a means to better understand smuggling threats and trends;

(f) Encourage States to provide additional information on national implementation as an ongoing process, including, for instance, in the form of a road map or action plan for addressing remaining measures to be taken to implement the resolution, taking into account the analysis provided by the Committee, in order to complement their national trade and border control systems over items encompassed in the resolution;

(g) Invite States to make available their additional information, including road maps or plans of action noted above, to the Council, in order to facilitate potential international cooperation on assistance.

VI. Outreach activities and assistance

106. The Committee took note of the concerns expressed by some States of insufficient understanding of their obligations under resolution 1540 (2004) as well as the lack of capacity to fulfil its requirements. Some States also highlighted differences in setting national priorities.

107. Outreach to States on a regional and subregional level, including cooperation with international, regional and subregional organizations, is high on the Committee's agenda to facilitate reporting and to assist States to implement national legislative and regulatory measures to prevent the proliferation of weapons of mass destruction, their means of delivery and related materials.

108. States should be aware that unless they meet their obligations in full, for instance by enacting and enforcing national legal and regulatory measures, their

territories may be used for the transit or trans-shipment of weapons of mass destruction, their means of delivery and related materials, or for the financing of activities that would contribute to proliferation, or as a safe haven to broker the sale of weapons of mass destruction, their means of delivery and related materials in other countries, or to develop and manufacture such items on their territory.

A. Outreach activities

109. The Chairmen raised these issues at outreach activities in New York with the Latin American and Caribbean States, the Asian States and the African States from October 2005 to March 2006, to remind them of their obligations under resolution 1540 (2004), including reporting on steps they have taken or plan to take to implement the resolution.

110. The first regional meeting related to the implementation of resolution 1540 (2004) was held jointly by Argentina and Spain for countries of Central America and the Caribbean on 27 and 28 June 2005 at Antigua, Guatemala, and specifically addressed the preparation of reports. The regional seminar organized by Argentina and the United Kingdom from 26 to 28 September 2005 in Buenos Aires for participants from the Latin American and Caribbean States raised awareness and provided guidance on how to respond to the obligations of the resolution. Another regional seminar for participants from Asian States is planned by China in Beijing in 2006. Peru expressed its willingness to organize a regional seminar on the implementation of the resolution by the end of 2006. Ghana is considering a request to host one such activity for Africa.

111. A meeting with the States members of the Pacific Islands Forum on 27 and 28 April 2006 in Auckland, New Zealand, will provide the opportunity to explain the requirements of and to assist States in fulfilling their reporting obligations under resolution 1540 (2004).

112. In addition, the Chairman, the members of the Committee and its experts participated in seminars, workshops and conferences to explain the requirements of resolution 1540 (2004) and the activities of the Committee with a view to increasing awareness and seeking support for the implementation of the resolution. A list of the events is contained in annex X.

B. Assistance

113. In adopting resolution 1540 (2004), the Security Council recognized that some States may require assistance in implementing the provisions of the resolution within their territories, and invited States in a position to do so to offer assistance, as appropriate, in response to specific requests to the States lacking the legal and regulatory infrastructure, implementation experience and/or resources for fulfilling the resolution.

114. In considering national reports and additional information submitted by States, the Committee has identified both offers of and requests for assistance by some States to implement resolution 1540 (2004). Acting as a clearing house, understood as allowing and promoting better exchange of information from States on offers and requests, the Committee has compiled all such offers and requests in a structured

manner. The information on the offers of assistance by 46 States is available on the website of the Committee. The Committee has indicated in which areas assistance can be provided by a specific country, as well as the way in which contacts for assistance could be established on a bilateral basis. The list of requests by 32 States has been circulated by note verbale to all States offering assistance.

115. To enable it to perform effectively its role as a clearing house for assistance, understood as in paragraph 114 above, the Committee has requested States to designate appropriate national points of contact.

116. The examination conducted by the Committee has clearly demonstrated that the level of and capacity for implementation of the resolution vary greatly from region to region. Therefore, when States develop national assistance strategies and set national assistance priorities in this area, they should take into account the implementation picture as it emerged from the national reports from various parts of the world. In this way, potential donors might concentrate their assistance efforts in particular on regions with the highest need of assistance.

Recommendations

117. The Committee recommends that the Security Council:

(a) Intensify and concentrate outreach activities, including towards States that did not submit their first national reports;

(b) Tailor outreach activities to meet the needs of individual States, encouraging States in particular regions or with similar national priorities to share lessons learned;

(c) Encourage and, on request, assist States to develop road maps or plans of action, taking into account, where appropriate, the analysis of the Committee, to address legislative and enforcement measures they have to take to fully implement resolution 1540 (2004);

(d) Encourage States to indicate deadlines for implementation, as well as to provide details of the areas in which they will require assistance to fill existing legislative and enforcement lacunae;

(e) Encourage the Committee to continue the dialogue with States on the basis of their matrices endorsed by the Committee in order to examine the implementation of the resolution;

(f) Encourage and assist States that submitted only a first report to provide additional information on national implementation of the obligations under resolution 1540 (2004);

(g) Encourage States which are in a position to offer assistance to make use of the list of States requesting assistance on a bilateral and multilateral basis;

(h) Encourage groups of States facing similar challenges to reporting or national implementation to work together, allowing each of them to submit national reports and to fulfil their obligation;

(i) Encourage States offering and requesting assistance to provide relevant data for updating their offers and requests;

(j) Encourage the Committee to continue, through its experts, to act as a clearing house, understood as in paragraph 114 above, including by collecting up-to-date information on the issue of assistance and by informally contacting States to enquire whether they might be interested in receiving information on offers and requests for assistance, and to promote assistance in close consultation with States concerned;

(k) Encourage States to make use of the assistance programmes offered by the Organization for the Prohibition of Chemical Weapons, IAEA and other international organizations.

VII. Cooperation

A. Cooperation with subsidiary bodies of the Security Council

118. The Committee maintained close cooperation with the Counter-Terrorism Committee and the Committee established pursuant to resolution 1267 (1999), as envisaged in resolution 1566 (2004) and in the relevant statements by the President of the Security Council adopted during joint briefings.

119. The Committee's experts worked closely with their colleagues in the Counter-Terrorism Committee Executive Directorate and the Analytical Support and Sanctions Monitoring Team concerning Al-Qaida and the Taliban, making every effort to maximize synergies between and among experts of the three Committees and to avoid duplication of work. Inter alia, the experts discussed common activities to approach States that did not submit reports to all three Committees; provided information on the implementation of resolution 1540 (2004) for country visits by representatives of the Executive Directorate and the Monitoring Team; participated in a common meeting with the CARICOM Secretariat in Georgetown, Guyana; and shared the methodology of work and discussed common approaches in providing technical assistance to States.

B. Cooperation with international organizations and arrangements

120. Recognizing that some States may require technical assistance from international organizations with expertise in the areas covered by resolution 1540 (2004), in particular IAEA and the Organization for the Prohibition of Chemical Weapons, the Committee invited the two organizations to inform it about their activities in assisting States to implement the Chemical Weapons Convention or conventions and agreements in the nuclear area.

121. On 13 April 2005, the Director-General of the Organization for the Prohibition of Chemical Weapons and the representatives of IAEA informed the Committee about the activities of their organizations, especially in the areas of assistance provided to improve the national implementation of the obligations under the Chemical Weapons Convention, the Nuclear Non-Proliferation Treaty and conventions on nuclear safety and security. The exchange of points of contact was agreed. Representatives of the Organization for the Prohibition of Chemical Weapons and IAEA contributed to the regional seminar organized by Argentina and the United Kingdom in Buenos Aires.

122. On 8 September 2005, the Chairman addressed the Second World Conference of Speakers of Parliaments. This was the first occasion to reach out to leaders of national legislatures to inform them on resolution 1540 (2004) and to seek their support in its implementation by incorporating its provisions into national legislation.

123. By exchange of letters the Chairmen of the Organization for Security and Cooperation in Europe (OSCE), the Nuclear Suppliers Group, the Missile Technology Control Regime, the Zangger Committee and the Executive Secretariat of the Hague Code of Conduct expressed their commitment to support fully the implementation of resolution 1540 (2004) by appropriate activities within their areas of concern. The Chairman met representatives of Interpol, the World Customs Organization and the United Nations Interregional Crime and Justice Research Institute and discussed possible ways of interaction and cooperation between those organizations and the Committee.

Recommendations

124. The Committee recommends that the Security Council:

(a) Continue and improve cooperation with international organizations and arrangements by making use of meetings of those organizations to address the obligations of States to fully implement resolution 1540 (2004);

(b) Invite representatives of international organizations to participate in workshops and seminars related to resolution 1540 (2004).

VIII. Transparency

125. The Committee conducted its work in a spirit of openness and transparency. All reports and additional information provided by States were published, together with all relevant documents for the Committee's work, on the official website of the Committee.

126. In the spirit of transparency the Committee made available to each State the results of its examination of the first national reports. The findings in the form of a matrix were communicated to each State asking for confirmation, amendments and additional information. Consent by States was requested for the use of additional information related to resolution 1540 (2004) as identified by the Committee on the official websites of the United Nations, IAEA, the Organization for the Prohibition of Chemical Weapons and other international organizations.

127. The legislative database developed by the Committee was also made available to States in the spirit of transparency to seek their comments and consent to make public the information the database contains about States' legislation on the Committee's website.

128. All offers of assistance identified in national reports are listed on the Committee's website together with the points of contact with a view to enabling direct contacts.

129. Promotion of transparency is also an important aspect of the efforts made by States to implement resolution 1540 (2004). Responding to provisions contained in paragraph 8 (d) of the resolution 63 States provided information on the measures they have developed with the view to working with and informing their industry regarding their obligations in the area of non-proliferation of weapons of mass destruction, their means of delivery and related materials; 46 States provided information for the public.

Recommendations

130. The Committee recommends that the Security Council:

Maintain transparency and openness as the underlying principle of work when continuing to monitor the implementation of the resolution.

IX. Conclusions and recommendations

131. The adoption by the Security Council of resolution 1540 (2004) was an important and timely measure in the international efforts aimed at preventing proliferation of weapons of mass destruction, their means of delivery and related materials, and a possible nexus between weapons of mass destruction and their means of delivery and non-State actors, in particular, terrorists. However, those efforts can be effective only if all States, irrespective of whether they possess a potential associated with weapons of mass destruction and their means of delivery, implement fully the requirements laid down in the resolution and cooperate closely among themselves to that end. Everybody should be aware that in this area the community of nations finds itself in a race against time.

132. In order to better prepare itself for its major function of monitoring implementation, the Committee decided to concentrate its activities, in the limited time available to it, on gaining as much information as possible about the actual situation with regard to the implementation of resolution 1540 (2004). It examined national reports, additional information provided by States and legislative data available on public websites of Governments, governmental agencies and international organizations.

133. After two years of its work, the Committee, with the help of its experts, was able to get a clearer understanding of the present implementation status of resolution 1540 (2004) as well as of the problems and challenges that need to be addressed to ensure the full implementation of the resolution by all States. In particular, the examination conducted by the Committee of the information in the national reports demonstrated that in many countries a number of legislative and other measures related to issues addressed in resolution 1540 (2004) were already in place before the adoption of the resolution. The examination also showed that after the adoption of the resolution some States started revisiting legislation in place to bring it into line with the obligations of the resolution or to establish national structures to develop new legislation to fill the gaps.

134. At the same time, the positive response by the majority of States cannot be considered entirely satisfactory since, apart from 62 States that still have to submit their reports, the lack of or insufficient information in many reports suggests that

much needs to be done henceforth to fulfil the implementation obligations under resolution 1540 (2004) in a comprehensive manner.

135. The Committee has taken note of the lack of capacity and of the requests for assistance of some States. For this reason, the Committee has developed an outreach strategy to promote the understanding and full implementation of resolution 1540 (2004). Only initial steps were taken, however, and there is still a need to develop a coherent strategy on assistance to contribute to the full implementation of the provisions of the resolution.

136. As full implementation of resolution 1540 (2004) by all States is a long-term endeavour that requires ongoing monitoring, the Committee recommends that the Security Council:

(a) Extend the mandate of the Committee established pursuant to resolution 1540 (2004) for another two years;

(b) Direct the Committee to pursue a work programme which would include the compilation of information on the status of States' implementation of all aspects of resolution 1540 (2004) — outreach, dialogue, assistance and cooperation — and which addresses in particular all aspects of paragraphs 1 and 2 of that resolution, as well as of paragraph 3 which encompasses (i) accountability, (ii) physical protection, (iii) border controls and law enforcement efforts and (iv) national export and trans-shipment controls, including controls on providing funds and services such as financing to such export and trans-shipment, covering a 12-month period, as opposed to the 3-month period its work programmes have covered in the past;

(c) Encourage States to provide additional information on national implementation as an ongoing process, including, for instance, in the form of a road map or action plan for addressing remaining measures to be taken to implement the resolution, taking into account the analysis provided by the Committee;

(d) Substantially widen and intensify regional and subregional outreach activities with a view to providing, on the specific request of a State or a group of States, in a structured manner, guidance to that State/States to implement their obligations under resolution 1540 (2004);

(e) Invite both States making offers of assistance and States requesting assistance to take a proactive approach on a bilateral basis, including making use of offers by international organizations, in order to contribute to capacity-building;

(f) Encourage States to make appropriate use of the background information provided through the legislative database developed by the Committee as well as legislative advice provided by international organizations, when enacting national implementation laws and measures;

(g) Continue identifying, in its future work on examination of the national reports, national practices in implementing resolution 1540 (2004) that might be used in providing further general and specific guidance upon request, to States seeking legislative assistance in implementing the resolution, particularly with respect to the provisions which, it appears from the reports submitted by States, many States still need to implement;

(h) Inform States that have already reported to the Committee that the Committee intends to contact them again after a period of time to be determined by the Committee to take stock of the extent to which the resolution has been fully implemented by that time;

(i) Encourage the Committee to continue, through its experts, to act as a clearing house, including by collecting up-to-date information on the issue of assistance and by informally contacting States to enquire whether they might be interested in receiving information on offers and requests for assistance.

Annex I

Experts appointed to assist the Committee

Name	*Country*	*Since*
Andemicael, Berhanykun	Eritrea	13 June 2005
Beck, Volker[a]	Germany	12 February 2005
Cupitt, Richard[b]	United States of America	6 February 2005
Heineken, Gunterio	Argentina	23 July 2005
Monteleone-Neto, Roque	Brazil	20 February 2005
Palanque, Patrice	France	18 July 2005
Slipchenko, Victor	Russian Federation	13 March 2005
Suseanu, Ionut	Romania	27 June 2005

[a] Coordinator.
[b] Point of contact for assistance.

Annex II

List of documents

Title	*Date*	*Document number or website*
Security Council resolution 1540 (2004)	28 April 2004	S/RES/1540 (2004)
Guidelines for the conduct of work	13 August 2004	http://disarmament2.un.org/committee1540/work.html
Guidelines for the preparation of national reports pursuant to resolution 1540 (2004)	13 August 2004	http://disarmament2.un.org/committee1540/naprepare.html
Guidelines for hiring experts	26 September 2004	http://disarmament2.un.org/committee1540/hiringexpert.html
Programmes of work		http://disarmament2.un.org/committee1540/programmeofwork.html
Chairman's report 2004	8 December 2004	S/2004/958 and Corr.1
Chairman's report 2005	19 December 2005	S/2005/799
Chairman's briefings to the Security Council	25 April 2005 20 July 2005 26 October 2005 21 February 2005	http://disarmament2.un.org/committee1540/meeting.html
Letters from the Secretary-General to the President of the Security Council on appointment of experts	21 December 2004 6 May 2005	S/2004/985 S/2005/299
Notes by the President of the Security Council on appointment of Chairmen and Vice-Chairmen	30 September 2004 5 January 2005 5 January 2006 31 January 2006	S/2004/770 S/2005/3 S/2006/7 S/2006/66
Statements by the President of the Security Council	25 April 2005 20 July 2005	S/PRST/2005/16 S/PRST/2005/34

Annex III

Member States submitting national reports as well as additional information as at April 2006

Submitting States

1. Albania
2. Algeria*
3. Andorra*
4. Angola
5. Argentina*
6. Armenia*
7. Australia*
8. Austria*
9. Azerbaijan*
10. Bahamas
11. Bahrain
12. Belarus*
13. Belgium*
14. Belize*
15. Benin
16. Bolivia
17. Bosnia and Herzegovina*
18. Brazil*
19. Brunei Darussalam
20. Bulgaria*
21. Burkina Faso
22. Cambodia
23. Canada*
24. Chile*
25. China*
26. Colombia
27. Costa Rica
28. Croatia*
29. Cuba*
30. Cyprus
31. Czech Republic*
32. Denmark*
33. Djibouti
34. Ecuador
35. Egypt*
36. El Salvador
37. Estonia
38. Finland*
39. France*
40. Georgia
41. Germany*
42. Ghana
43. Greece*
44. Grenada

Submitting States

45. Guatemala
46. Guyana
47. Hungary*
48. Iceland
49. India*
50. Indonesia*
51. Iran (Islamic Republic of)*
52. Iraq*
53. Ireland*
54. Israel
55. Italy*
56. Jamaica
57. Japan*
58. Jordan
59. Kazakhstan*
60. Kenya
61. Kiribati
62. Kuwait
63. Kyrgyzstan*
64. Lao's People's Democratic Republic
65. Latvia*
66. Lebanon
67. Libyan Arab Jamahiriya*
68. Liechtenstein*
69. Lithuania*
70. Luxembourg*
71. Malaysia
72. Malta*
73. Marshall Islands
74. Mexico*
75. Monaco
76. Mongolia
77. Morocco*
78. Myanmar
79. Namibia
80. Nepal
81. Netherlands*
82. New Zealand*
83. Nigeria
84. Norway*
85. Oman*
86. Pakistan*
87. Panama*
88. Paraguay*

89. Peru*
90. Philippines
91. Poland*
92. Portugal*
93. Qatar*
94. Republic of Korea*
95. Republic of Moldova*
96. Romania*
97. Russian Federation*
98. Samoa
99. Saudi Arabia*
100. Senegal
101. Serbia and Montenegro*
102. Singapore*
103. Slovakia*
104. Slovenia*
105. South Africa*
106. Spain*
107. Sri Lanka*
108. Sweden*
109. Switzerland*
110. Syrian Arab Republic*
111. Tajikistan*
112. Thailand
113. The former Yugoslav Republic of Macedonia*
114. Tonga
115. Trinidad and Tobago
116. Tunisia
117. Turkey*
118. Turkmenistan
119. Uganda
120. Ukraine*
121. United Arab Emirates
122. United Kingdom*
123. United Republic of Tanzania
124. United States of America*
125. Uruguay*
126. Uzbekistan
127. Venezuela (Bolivarian Republic of)*
128. Viet Nam*
129. Yemen

European Union (non-Member)

* States which provided both a national report and additional information.

Annex IV

Member States which did not submit a report as at April 2006

Non-submitting States

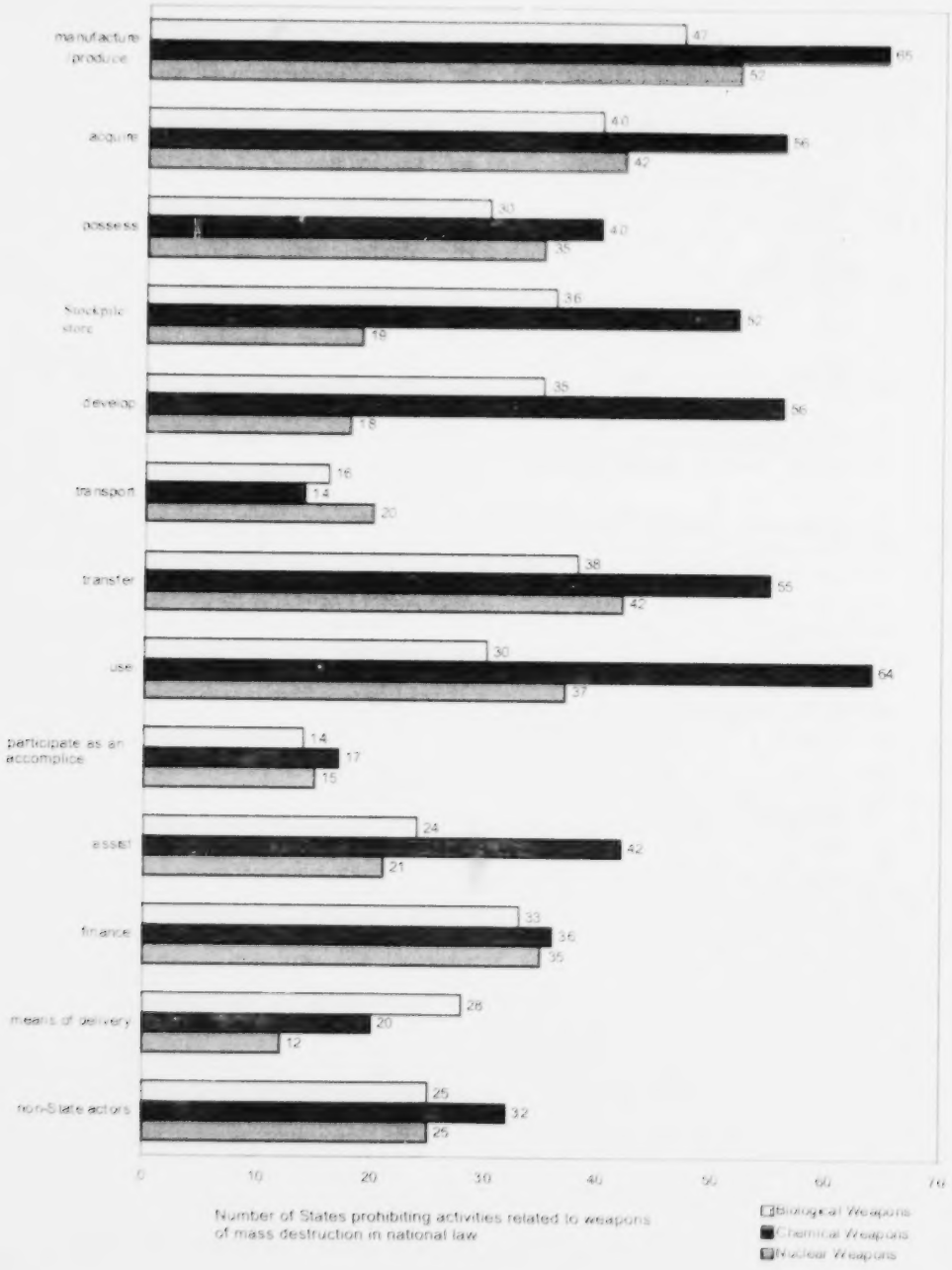
1. Afghanistan
2. Antigua and Barbuda
3. Bangladesh
4. Barbados
5. Bhutan
6. Botswana
7. Burundi
8. Cameroon
9. Cape Verde
10. Central African Republic
11. Chad
12. Comoros
13. Congo
14. Côte d'Ivoire
15. Democratic People's Republic of Korea
16. Democratic Republic of the Congo
17. Dominica
18. Dominican Republic
19. Equatorial Guinea
20. Eritrea
21. Ethiopia
22. Fiji
23. Gabon
24. Gambia
25. Guinea
26. Guinea-Bissau
27. Haiti
28. Honduras
29. Lesotho
30. Liberia
31. Madagascar

Non-submitting States

32. Malawi
33. Maldives
34. Mali
35. Mauritania
36. Mauritius
37. Micronesia (Federated States of)
38. Mozambique
39. Nauru
40. Nicaragua
41. Niger
42. Palau
43. Papua New Guinea
44. Rwanda
45. Saint Kitts and Nevis
46. Saint Lucia
47. Saint Vincent and the Grenadines
48. San Marino
49. Sao Tome and Principe
50. Seychelles
51. Sierra Leone
52. Solomon Islands
53. Somalia
54. Sudan
55. Suriname
56. Swaziland
57. Timor-Leste
58. Togo
59. Tuvalu
60. Vanuatu
61. Zambia
62. Zimbabwe

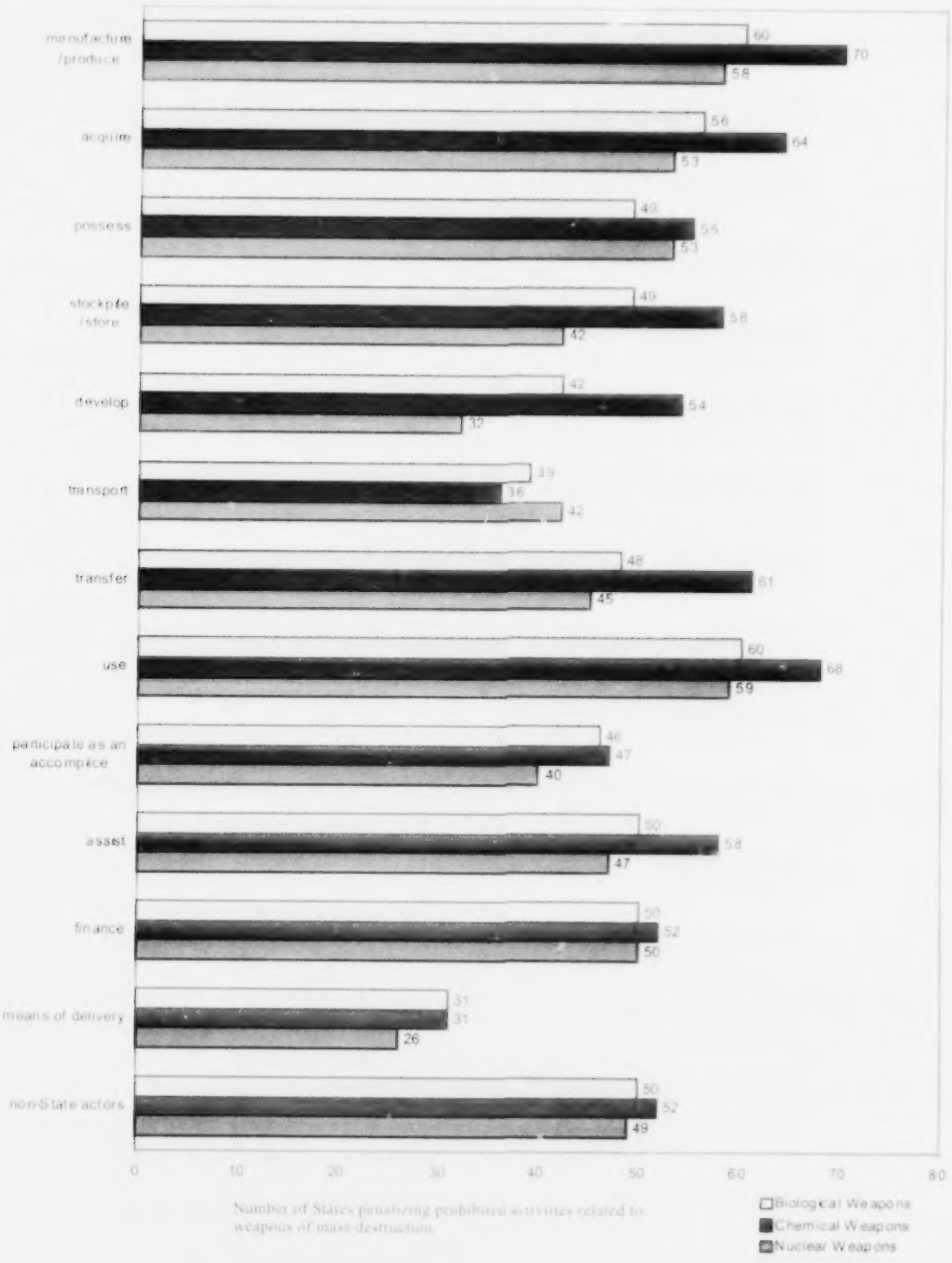
Annex V.A

States reporting on national legal framework under paragraph 2



Annex V.B

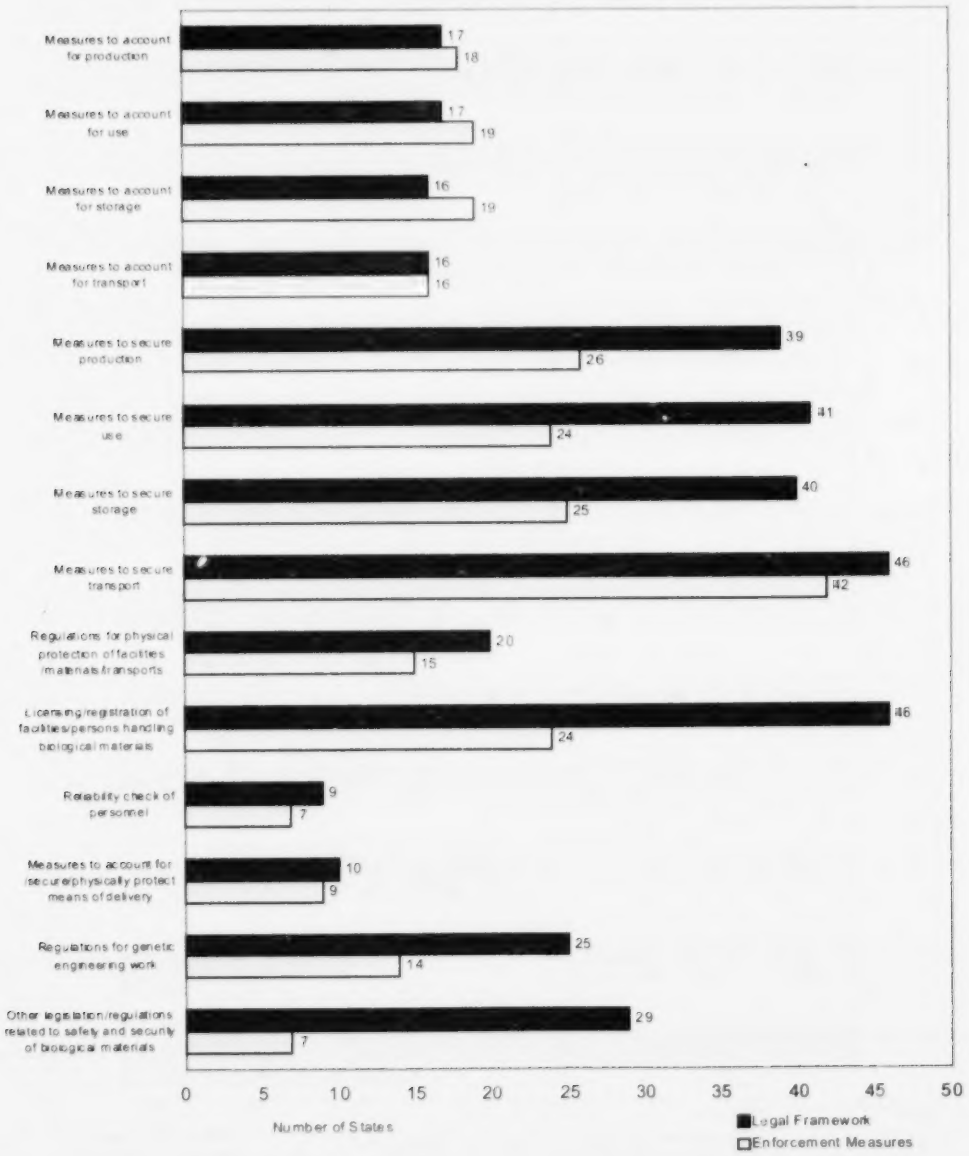
States reporting on penal enforcement measures under paragraph 2



Annex VI

States reporting on national legal framework and enforcement measures under paragraph 3 (a) and (b)

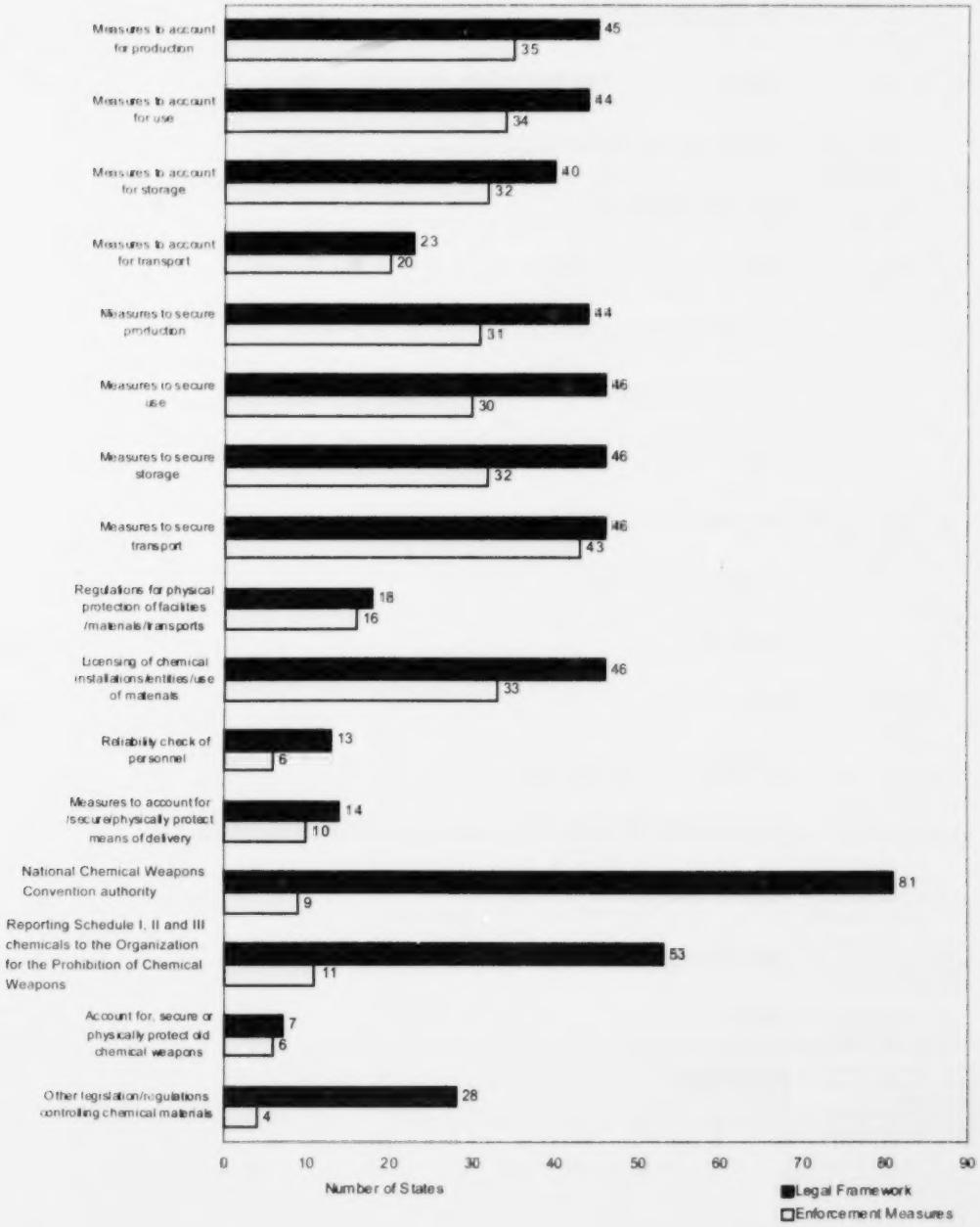
Biological weapons and related materials



Annex VII

States reporting on national legal framework and enforcement measures under paragraph 3 (a) and (b)

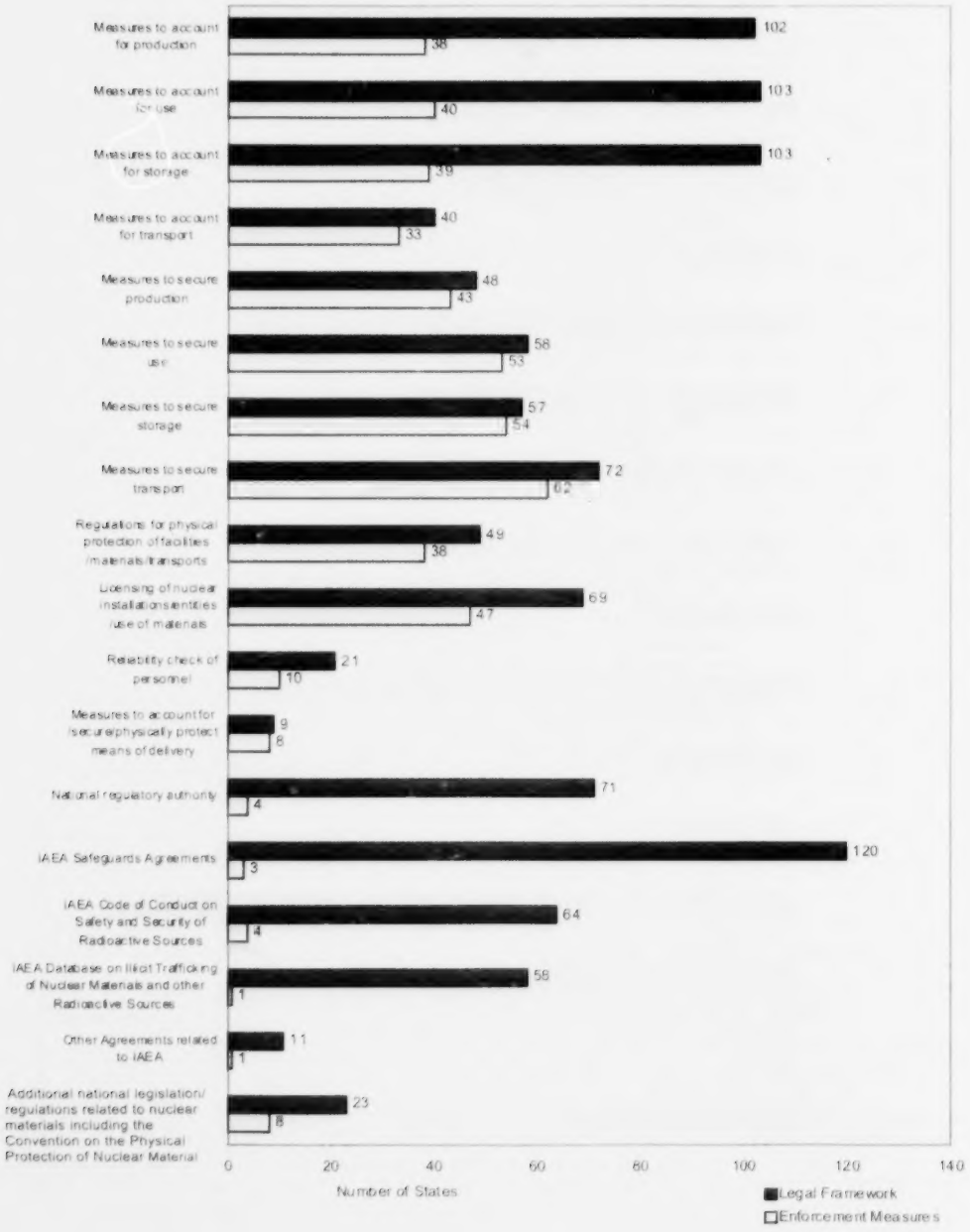
Chemical weapons and related materials



Annex VIII

States reporting on national legal framework and enforcement measures under paragraph 3 (a) and (b)

Nuclear weapons and related materials



Annex IX

States reporting on national legal framework and enforcement measures under paragraph 3 (c) and (d)

Border and export controls

Annex X

List of outreach activities as at ... April 2006

Seminars, workshops and conferences in which the Chairman, members and experts of the Committee participated to inform on resolution 1540 (2004)

Title	*Organizer*	*Date*	*Location*	*Participants*
Global non-proliferation and counter-terrorism: Security Council resolution 1540 (2004)	Royal Institute of International Affairs and the Clingendael Institute	11-12 October 2004	London	Ambassador M. Motoc, Chairman
Asian Pacific Nuclear Safeguards and Security Conference	Ministry of Foreign Affairs of Australia	8-9 October 2004	Sydney (Australia)	Ambassador M. Motoc, Chairman
International Workshop on Security Council resolution 1540 (2004) as it pertains to biological weapons	De Paul University, College of Law	3 December 2004	Geneva	Ambassador M. Motoc, Chairman
Interpol Conference on Biosecurity	Interpol	1-2 March 2005	Lyon (France)	Ambassador M. Motoc, Chairman
Workshop on "A New Role for the United Nations Security Council: Criminalizing Weapons of Mass Destruction Proliferation"	Institute of Nuclear Materials Management	15 March 2005	Arlington (United States of America)	Ambassador M. Motoc, Chairman
OSCE Forum for Security Cooperation	OSCE	15 July 2005	Vienna	V. Slipchenko, expert
Briefing by the Chairman to the Second World Conference of Speakers of Parliament	Inter-Parliamentary Union	8 September 2005	United Nations Headquarters	Ambassador M. Motoc, Chairman
Seventh International Export Control Conference	Governments of Sweden and United States of America	20-22 September 2005	Stockholm	R. Cupitt, expert
Regional seminar: advancing in the implementation of Security Council resolution 1540 (2004)	Governments of Argentina and United Kingdom	26-28 September 2005	Buenos Aires	M.T. Taguiang, Vice-Chairman G. Martinic, Committee member V. Slipchenko, expert I. Suscanu, expert
The Global Bargain for Bio-Security and Health	International Law Institute-Uganda and International Consortium for Law and Strategic Security	28 September-1 October 2005	Kampala	B. Andemicael, expert
Briefing by the Chairman to the Group of Latin American and Caribbean States	Group of Latin American and Caribbean States	6 October 2005	United Nations Headquarters	Ambassador M. Motoc, Chairman; experts
Looking towards 2010: finding common ground	International Peace Academy	15 October 2005	New York	V. Beck, expert
Effective Elements of Export Control for APEC Economies	Governments of United States of America and Viet Nam	1-3 November 2005	Honolulu (United States of America)	I. Suscanu, expert
Eighteenth Annual Conference on Global Trade Controls	IBC Global Conferences	2-4 November 2005	London	R. Cupitt, expert

Title	*Organizer*	*Date*	*Location*	*Participants*
Assisting States to Effectively Fulfil Legal Requirements of resolution 1540 (2004)	International Consortium for Law and Strategic Security	15 November 2005	New York	Ambassador M. Motoc, Chairman V. Beck, expert
Briefing by the Chairman to the Asian Regional Group	Asian Regional Group	22 November 2005	United Nations Headquarters	Ambassador M. Motoc, Chairman; experts
The Fourth United Nations-Republic of Korea Joint Conference on Disarmament and Non-Proliferation Issues	Government of the Republic of Korea and Regional Office for Asia of the Department for Disarmament Affairs	1-3 December 2005	Busan (Republic of Korea)	R. Monteleone-Neto, expert
International Seminar on Recent Trend of Export Control Norm and its Effect on Korean Enterprises	Government of the Republic of Korea	5 December 2005	Seoul	R. Monteleone-Neto, expert
Nuclear non-proliferation: What next after the NPT Review	Wilton Park Conference	12-16 December 2005	Steyning (United Kingdom)	V. Slipchenko, expert
Second International Conference on Bioterrorism Prevention	International Consortium for Law and Strategic Security and Bucharest Regional Centre on Bioterrorism	14-16 December 2005	Bucharest	I. Suseanu, expert
Meeting with the CARICOM Secretariat	CARICOM Secretariat and Counter-Terrorism Committee Executive Directorate	16-17 February 2006	Georgetown (Guyana)	R. Monteleone-Neto, expert
Briefing by the Chairman of the African Regional Group	African Regional Group	22 March 2006	United Nations Headquarters	Ambassador P. Burian, Chairman; experts